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January 31, 2019

Hon. Paul A. Engelmayer  
United States District Judge  
Southern District of New York  
40 Foley Square, Room 2201  
New York, New York 10007

Re: *McNeil v. LVMH, Inc. et al.*, 1:18-cv-11751 (PAE)

Dear Judge Engelmayer:

Our firm represents defendants LVMH Moët Hennessy Louis Vuitton Inc.,<sup>1</sup> Fresh, Inc., Aaron Owen, and Hannah Lee (collectively, “Defendants”) in the above-referenced action (the “Action”) brought by current Fresh, Inc. employee Kharisma McNeil (“Plaintiff”). We write to request an extension of the time to answer or otherwise respond to the Amended Complaint in the Action. This is the first request for an extension in this Action. Plaintiff does not consent to this request. Her counsel stated that Plaintiff would not consent because Defendants have had adequate time to respond to the Amended Complaint.

By way of brief background, Plaintiff commenced this employment discrimination and retaliation case on December 14, 2018, and amended her Complaint on December 18, 2018. On December 17, 2018, Plaintiff sent a request for waiver of service to Defendants, and counsel agreed to waive service on behalf of Defendants. Absent an extension, Defendants are presently required to answer or otherwise respond to the Amended Complaint by February 15, 2019 (Dkt. 24).

As detailed in Defendants’ Memorandum of Law in Support of Motion to Compel Arbitration, Plaintiff entered into an arbitration agreement in connection with her employment with Fresh, Inc. that provides for mandatory arbitration of the claims in this Action (Dkt. 21). Indeed, Plaintiff commenced an arbitration proceeding against Defendants before JAMS on November 26, 2018, which remains pending. On January 18, 2019, Defendants filed a Motion to Compel Arbitration with the Court requesting that the Court compel arbitration of all claims in the Action and stay this Action until completion of the arbitration proceeding (Dkt. 20). Plaintiff’s Opposition to the Motion to Compel Arbitration is due by February 1, 2019, and Defendants’ Reply will follow.

Defendants request that the Court extend the deadline to answer or otherwise respond to the Amended Complaint until fourteen days after resolution of the Motion to Compel Arbitration, if the Court denies the Motion to Compel. Requiring Defendants to respond to the Amended Complaint at this juncture is contrary to the Plaintiff’s arbitration agreement with Fresh, Inc. and has been recognized as procedurally

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<sup>1</sup> Plaintiff incorrectly refers to LVMH Moët Hennessy Louis Vuitton Inc. as “LVMH, Inc.” (See Dkt. 8, Am. Compl. ¶ 6.)

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unnecessary by courts in this and other jurisdictions. *See, e.g., JS Barkats, PLLC v. BE, Inc.*, No. 12 CIV 6779 JFK, 2013 WL 444919, at \*2 (S.D.N.Y. Feb. 6, 2013) (noting that “parties are permitted to file motions to stay in lieu of an answer or other dispositive motions”); *Lamkin v. Morinda Props. Weight Parcel, LLC*, 440 Fed. App’x 604, 607 (10th Cir. 2011) (“[R]equiring a party to file an answer denying material allegations in the complaint and asserting potential affirmative defenses—in short, formally and substantively engaging in the merits of the litigation—in order to enforce its right not to litigate is a non-sequitur.”)

Thank you for your consideration of the foregoing.

Respectfully submitted,



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